

10 FEBRUARY 1948

I N D E X
of
WITNESSES

Defense' Witnesses

SUZUKI, Tadakatsu (recalled)

Direct by Mr. Furness

Cross by Colonel Mornane

NOON RECESS

Cross (cont'd) by Colonel Mornane

Redirect by Mr. Furness

(Witness excused)

AFTERNOON RECESS

Defense Rested in Sur-rebuttal

Testimony Closed

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~~Tuesday, 10 February 1948~~

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3 INTERNATIONAL MILITARY TRIBUNAL
4 FOR THE FAR EAST
5 Court House of the Tribunal
6 War Ministry Building
7 Tokyo, Japan

8 The Tribunal met, pursuant to adjournment,
9 at 0930.

10 Appearances:

11 For the Tribunal, all Members sitting, with
12 the exception of: HONORABLE JUSTICE LORD PATRICK,
13 Member from the United Kingdom of Great Britain, not
14 sitting from 0930 to 1600; HONORABLE JUSTICE HENRI
15 BERNARD, Member from the Republic of France, not sitting
16 from 1330 to 1445.

17 For the Prosecution Section, same as before.

18 For the Defense Section, same as before.

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20 (English to Japanese and Japanese
21 to English interpretation was made by the
22 Language Section, IMTFE.)
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1 MARSHAL OF THE COURT: The International
2 Military Tribunal for the Far East is now in session.

3 THE PRESIDENT: All the accused are present
4 except SHIRATORI, who is represented by counsel. The
5 Sugamo prison surgeon certifies that he is ill and
6 unable to attend the trial today. The certificate
7 will be recorded and filed.

8 Major Blakeney.

9 MR. BLAKENEY: On behalf of the defendant
10 General UMEZU, I offer in evidence in surrebuttal
11 the affidavit of SHIBAYAMA, Kenshiro, defense document
12 3082. The purpose of this evidence is to rebut the
13 hearsay evidence contained in the prosecution's
14 exhibit No. 3269 to the effect that General UMEZU
15 in 1938 went to China to convey to someone the outline
16 of something unspecified, decided at an Imperial
17 Conference of unknown date, transcript, pages 37,245,
18 et seq., in proof of which the exhibit was offered by
19 the prosecution, transcript page 27,244.

20 I understand that the prosecution does de-
21 sire to cross-examine, and I therefore ask that the
22 witness be called in -- SHIBAYAMA.

23 THE PRESIDENT: Is there no objection?

24 MR. BLAKENEY: Any objection to the affidavit?
25

1 THE PRESIDENT: Admitted on the usual --

2 MR. BLAKENEY: The prosecution advise me
3 they have decided not to cross-examine; so that the
4 witness's presence can be dispensed with.

5 THE PRESIDENT: Apparently, there is no
6 objection to the affidavit.

7 MR. BLAKENEY: No, your Honor.

8 THE PRESIDENT: Admitted on the usual terms.

9 CLERK OF THE COURT: Defense document 3082
10 will receive exhibit No. 3906.

11 (Whereupon, the document above
12 referred to was marked defense exhibit
13 No. 3906 and received in evidence.)

14 MR. BLAKENEY: I will read the exhibit,
15 omitting the formal parts.

16 "1. From March 1937 to July 1938 I occupied
17 the post of Chief of the Military Affairs Section of
18 the War Ministry, my function being that of handling
19 business relating to China affairs (I being the sec-
20 tion chief concerned), such as liaison business, with
21 respect to policies, between the War Ministry and
22 the front troops, all of which went through my hands.

23 "2. I have been shown exhibit 3,269, from
24 which it appears that Vice-Minister UMEZU was reported
25 to have gone to China, taking the outline of the

1 decision of the Imperial Conference. This is quite
2 incorrect. Other matters referred to in the same
3 document likewise are not true -- as for example that
4 Commander TERAUCHI requested the visit of the War
5 Minister or Vice-Minister to Tientsin. It is true
6 that Vice-Minister UMEZU went to China at that time;
7 however, his trip was made in the following circum-
8 stances.

9 "3. The Japanese Government had at that
10 time decided upon a policy of undertaking through
11 German Ambassador Trautmann negotiations with Chiang
12 Kai-shek for peace between Japan and China. By order
13 of the War Minister I drew up, working with Director
14 of the Foreign Ministry Bureau of Eastern Asiatic
15 Affairs ISHII and Chief of the 1st Military Affairs
16 Section of the Navy Ministry HOSHINO, a plan for the
17 peace negotiations. The government meanwhile carried
18 on discussions with Trautmann.

19 "4. Since it was feared that some dis-
20 turbance might occur among the soldiers at the front
21 if the plan was realized, it was considered that it
22 might be better if a preliminary understanding could
23 be reached at the front. To carry out this intention
24 of the War Minister, it was decided that the Vice-
25 Minister, Lieutenant General UMEZU, should be

1 dispatched to the China front. I was ordered to
2 accompany him.

3 "5. We left Tokyo on 9 January, 1938,
4 visited Tientsin, Peking, Changchiakow, Taiyuanfu,
5 Shichiachwang, and Tsinan, conveying the intention
6 of the central army authorities mostly to army and
7 division commanders. There was nothing conveyed to
8 anyone in China of any such intention as it suggested
9 in exhibit 3,269, of not dealing with Chiang Kai-
10 shek. We had in fact obtained agreement of the
11 commanders in the field to the intention of the
12 central authorities, mentioned above, of attempting to
13 make peace with Chiang through the medium of Traut-
14 man, and were ready to return to Japan, convinced
15 that no disturbance would occur among the forces in
16 the field when on 16 January the 'KONOYE Declaration'
17 of 'no further negotiation with Chiang Kai-shek',
18 entirely nullifying our work."
19

20 That concludes my surrebuttal.

21 THE PRESIDENT: Mr. McManus.

22 MR. McMANUS: Mr. President and Members of
23 the Tribunal, if your Honors please, the Tribunal
24 will recollect that after the presentation of my
25 order of proof on surrebuttal I requested the Tribunal
to be permitted at some future date, at the convenience

1 of the Tribunal, to present two additional documents
2 which, because of a few unsurmountable difficulties,
3 I was not able to present at the time when I presented
4 the former documents. I have two affidavits, and
5 I understand, after conference with the prosecution,
6 that they do not desire to cross-examine these
7 witnesses. However, I do understand that there might
8 be at this time some objection by the prosecutor.
9 With the permission of the Tribunal, may I be permitted
10 to tender the two remaining documents?

11 THE PRESIDENT: Tender them.

12 MR. McMANUS: I now offer defense document
13 3067 in refutation of OKADA's statement to HARADA
14 wherein he said ARAKI, YANAGAWA, and MAZAKI were in
15 favor of the annexation of Manchuria, exhibit 3777,
16 record page 37,666. I further offer this affidavit
17 of MAZAKI to refute HARADA's Memoirs on page 37,632
18 and exhibit 3769, wherein he said that freedom of
19 speech was repressed because of the pressure of the
20 army. I also call to the attention of the Tribunal
21 that the very next document offered by the prosecution
22 after 3769, which was exhibit 3770-A, is in direct
23 contradiction of the former one, as in the latter
24 document the War Minister was admonished for not
25 controlling the newspapers as this was the medium by

1 which it was claimed propaganda was spread. In the
2 former document the army was accused of controlling
3 the newspapers.

4 I now tender document 3057, the affidavit
5 of MAZAKI.

6 THE PRESIDENT: Mr. Comyns Carr.

7 MR. COMYNS CARR: May it please the Tribunal,
8 I will not comment on my friend's last remarks, which
9 are in the nature of a summation; but in our submission,
10 this document is of no probative value. The exhibit
11 is a statement made by OKADA, the then Premier, to
12 HARADA about ARAKI and MAZAKI. They could have called
13 OKADA to say that he did not say it, if that were
14 alleged to be the fact. ARAKI has already been cross-
15 examined about it and given his version. But to call
16 MAZAKI to say that it didn't represent his personal
17 opinion is irrelevant, and MAZAKI has already given
18 evidence in general about these matters. In our
19 submission, his statements as to ARAKI's opinion,
20 which is the only relevant question, have no probative
21 value.
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1 MR. McMANUS: If your Honor's please, in
2 reply to the prosecutor's objection, wherein he stated
3 that MAZAKI has already given testimony in general
4 concerning these matters, I must state that in this
5 affidavit it he makes specific statements concerning
6 facts which were brought out on rebuttal from the
7 HARADA memoirs. When MAZAKI took the stand, it was
8 impossible for me to determine at that time just what
9 portion of the HARADA memoirs were going to be relied
10 upon by the prosecution. Consequently, I could not
11 have him refute any specific statements before I knew
12 what the specific statements were to be.

13 Concerning the statement of the prosecutor
14 that I could have OKADA here to deny a portion of those
15 memoirs, might I specifically point out to the Court
16 by the same token the prosecutor could have had a
17 live witness here, rather than relying on the memoirs.

18 In my opinion, if the Tribunal pleases, the
19 document is important as it directly contradicts
20 statements in the memoirs and it does have probative
21 value and it is a proper reply on surrebuttal. I
22 ask the Tribunal to accept it.

23 THE PRESIDENT: By a majority, the objection
24 is sustained and the document rejected.

25 MR. McMANUS: I now tender, if the Tribunal

1 pleases, document 3076, which is an affidavit of
2 HATOYAMA. This document is offered to further refute
3 HARADA's statement in exhibit 3769, record page 37,632
4 to the effect that ARAKI might have been responsible
5 for suppression of speech.

6 This affidavit is further offered for the
7 purpose of refuting the allegations made by HARADA
8 that ARAKI and MAZAKI were in favor of the annexation
9 of Manchuria. (Exhibit 3777, record page 37,666.)

10 It is further offered to refute exhibit 3772,
11 record page 37,637, the allegations contained in HARADA's
12 diary that War Minister ARAKI pressed for withdrawal
13 from the League of Nations.

14 It is further tendered for the purpose of
15 refuting exhibit 3775-A and 3775-B, wherein HARADA
16 concluded that ARAKI and the Navy Minister issued a
17 joint statement after reading a newspaper article
18 saying that those people who endeavored to alienate
19 the public mind from the military were insolent.

20
21 MR. COMYNS CARL: The prosecution objects
22 to this on similar grounds to the last one, your Honor.

23 ARAKI was fully cross-examined in detail
24 about each of the matters referred to and he gave his
25 own explanations or details, and if it was desired to
corroborate those by this witness, that could have

1 been done while his case was being heard.

2 In any case, this witness' statements in the
3 last three paragraphs, which are the only material
4 ones, do not really throw any light on the matter one
5 way or the other, in my submission.

6 MR. McMANUS: I should like to point out to
7 the Members of the Tribunal that HATOYAMA was not at
8 any time a witness here, so that it cannot be said
9 that he at any time testified in general concerning
10 these matters.

11 I should like to further point out that
12 HATOYAMA is the only surviving cabinet member of that
13 time. HARADA is not.

14 I believe the document is important and it
15 has probative value, and I request the Tribunal to
16 accept same.

17 THE PRESIDENT: By a majority, the objection
18 is sustained and the document rejected.

19 MR. McMANUS: That concludes my order of
20 proof.

21 MR. SHIMANOCHI: On behalf of OSHIMA, I
22 tender defense document No. 3077. the affidavit of
23 SAITO, Yoshiye, and ask that it be admitted into
24 evidence.
25

I understand that the prosecution has no

1 objections to this affidavit, nor any desire to cross-
2 examine this witness.

3 THE PRESIDENT: Admitted on the usual terms.

4 CLERK OF THE COURT: Defense document 3077 will
5 receive exhibit No. 3907.

6 (Whereupon, the document above
7 referred to was marked defense exhibit
8 No. 3907 and received in evidence.)

9 MR. SHIMANOUCI: I now read exhibit ~~3907~~,
10 omitting the formal part:

11 "Having duly sworn an oath, I, SAITO, Yoshiye,
12 hereby depose as follows:

13 "1. My present address is No. 42, Shoto,
14 Shibuya Ward, Tokyo.

15 "2. From July 1940 to July 1941, I was a
16 counsellor of the Foreign Office and assisted Foreign
17 Minister MATSUOKA regarding the conclusion of the
18 Tripartite Pact in the way of office work.

19 "3. According to the Tripartite Pact, in
20 case any one party out of the three contracting parties
21 be attacked by another power or powers, who are not
22 involved in the European War or the China Incident at
23 the time of concluding this pact the remaining con-
24 tracting parties shall aid the party so attacked by
25 means of political, economic and military measures.

But the problem of judging as to whether one of the contracting parties was attacked as stipulated in the pact, viz. whether the remaining parties were to aid, was a matter the Japanese, German or Italian Government was to decide individually, and the commission incidental to the said pact was not empowered to decide on such a matter. Further, the Japanese Government never did authorize the commission to decide on such a matter.

"4. As a result of the Tripartite Pact, three commissions, namely, the general commission, military commission and economic commission were to be established in Tokyo, Berlin and Rome respectively, but, these commissions, organized by the Foreign Minister of the country where the commissions were established, with the Ambassadors, military and naval attaches and others as members were nothing more than liaison organs for the Japanese, German and Italian Governments, and these commissions were not authorized to decide matters building their governments.

"Deponent SAITO, Yoshiye."

On behalf of OSHIMA, I offer defense document No. 3078, the affidavit of USAMI, Uzuhiko, and request its admission into evidence.

The prosecution, as I understand, has no

1 objections to this affidavit, nor desires to cross-
2 examine the witness.

3 THE PRESIDENT: Admitted on the usual terms.

4 CLERK OF THE COURT: Defense document 3078
5 will receive exhibit No. 3908.

6 (Whereupon, the document above
7 referred to was marked defense exhibit
8 No. 3908 and received in evidence.)
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1 MR. SHIMANOUCI: I now read exhibit 3908:

2 "I, USAMI, Uzuhiko, swear on oath and depose as
3 follows:

4 "1. My present address is No. 616, 4-chome,
5 Koenji, Suginami-ward, Tokyo.

6 "2. From November 11th, 1938, to May, 1940, I
7 served at Berlin as counsellor of the Japanese Embassy
8 to Germany. During this period I helped Ambassador
9 OSHIMA in connection with the negotiations for the Japan-
10 Germany-Italy Treaty.

11 "3. As I have stated at length in my affidavit,
12 exhibit No. 3494, it is true that in reply to the
13 Government directive concerning the above negotiations
14 which had been brought late in February, 1939, by Mr.
15 ITO, the Minister Extraordinary, Ambassadors OSHIMA and
16 SHIRATORI submitted their opinions to Foreign Minister
17 ARITA early in March and that late in March the Foreign
18 Minister in turn wired a new directive. It is however
19 not true that in the meantime, that is, between the be-
20 ginning and end of March, 1939, Foreign Minister ARITA
21 sent a directive to our Embassy in Berlin, urging us to
22 carry on the negotiations pursuant to the original
23 directive brought by Mr. ITO, the Minister Extraordinary.

24 "On this 5th day of February, 1948

25 "DEPONENT: /s/ USAMI, Uzuhiko"

1 I next tender in evidence defense document No.
2 3079, the affidavit of the witness MAEDA, Minoru, and
3 request its reception into evidence. I understand the
4 prosecution has no objections to this affidavit nor any
5 desire to cross-examine the witness.

6 THE PRESIDENT: Admitted on the usual terms.

7 CLERK OF THE COURT: Defense document 3079 will
8 receive exhibit No. 3909.

9 (Whereupon, the document above
10 referred to was marked defense exhibit
11 No. 3909 and received in evidence.)

12 MR. SHIMANOCHI: I now read exhibit No. 3909:

13 "I, MAEDA, Minoru, upon being duly sworn, depose
14 as follows:

15 "1. From 15 October 1940 to 15 May 1942, as
16 chief of the 3rd Section of the Naval General Staff, I
17 was in charge of collecting and arranging all information
18 with reference to the Navy. The rank I held then was
19 Rear-Admiral.

20 "2. During my tenure of the above-mentioned
21 office we of the Navy were never informed, directly or
22 indirectly, by the German Government, by Ambassador
23 OSHIMA, our Naval Attache to the Embassy in Berlin nor by
24 any other Naval Personnel stationed in Germany, of any
25 such intentions as to use submarines to massacre crews of

1 merchant vessels, or to kill the surviving crew of such
2 vessels that were sunk by submarines, by shooting or
3 otherwise. In addition, the Navy never received any
4 report from anybody to the effect that Ambassador OSHIMA
5 had such talks with Hitler concerning the killing of crew
6 members in the manner as stated in the above

7 "3. I shall further add that during my tenure
8 of office of the above I never heard anything discussed
9 as to the intention on the part of the Japanese Naval
10 Central Authorities to adopt such measures in killing
11 crews as in the foregoing, nor ever received any infor-
12 mation that the Japanese Navy committed such acts.

13 "On this 4th day of February, 1948

14 "At: Tokyo.

15 "DEPONENT: MAEDA, Minoru"

16 I now tender in evidence defense document No.
17 3080, the affidavit of the witness MATSUSHIMA, Shikao,
18 and ask that it be admitted. I understand the prosecution
19 has no objections to the document nor any desire to
20 cross-examine.
21

22 THE PRESIDENT: Admitted on the usual terms.

23 CLERK OF THE COURT: Defense document 3080 will
24 receive exhibit No. 3910.

25 (Whereupon, the document above
referred to was marked defense exhibit

No. 3910 and received in evidence.)

MR. SHIMANOUCI: I now read exhibit No. 3910:

"I, MATSUSHIMA, Shikao, state under oath as follows:

"1. My present address is No. 2931, Katasemachi, Fujisawa-shi, Kanagawa Prefecture.

"2. I was from April, 1936, until November, 1939, the Director of the Trade Department of the Foreign Office. Thereafter I was stationed in Sweden as the Japanese Minister until March, 1941. From March, 1941, until May, 1945, I was in Berlin as the Envoy at large for Europe, and was principally in charge of economic matters.

"3. The Japanese-German Economic Agreement and the Accessory Protocol, exhibit No. 3520, concerning the exchange of goods between Japan and Germany, which also included matters pertaining to the institution of ¥ 1,000,000,000 mutual credit for three years, were signed in January, 1943, by Foreign Minister Ribbentrop and Ambassador OSHIMA after the negotiations had taken place in Berlin for more than one year.

"4. I participated in the negotiations for that Agreement. Ambassador OSHIMA talked from time to time with Ribbentrop about this matter, but routine negotiations were conducted almost exclusively between me and

1 Wiehl, Director of the Trade Department of the German
2 Foreign Office. I heard every detail of the talks be-
3 tween OSHIMA and Ribbentrop both directly from OSHIMA and
4 Wiehl. As far as I know, during the whole course of
5 negotiations all proposals made by us to the German side
6 were either approved by the Foreign Office beforehand or
7 in accordance with instructions of the Foreign Office.
8 Ambassador OSHIMA never made any proposals on his own
9 initiative without basing them on approvals or instruc-
10 tions previously obtained from the Foreign Office.

11 "5. During these negotiations I often communi-
12 cated instructions of the Rome Government on specific
13 matters to the German side saying that they were
14 personal proposals or opinions of Ambassador OSHIMA, and
15 that, if the German side agreed to them, OSHIMA would
16 endeavour to persuade the Japanese Government to accept
17 other German demands. This was diplomatic tactics used
18 in order to secure concessions from Germany. Of course
19 the contents of these talks were previously agreed upon
20 between OSHIMA and the Foreign Office.

21 "6. The question of defining the sphere of
22 application of this Economic Agreement, namely, the ex-
23 tent of the economic sphere under the leadership of Japan
24 and Germany, was raised by Ribbentrop, according to what
25 I heard from OSHIMA at that time. Concerning this

1 question also Ambassador OSHIMA as well as I conducted
2 talks with Germany always after obtaining instructions of
3 the Japanese Government.

4 "7. The signing of this agreement took place
5 after the full approval had been given by the Japanese
6 Government beforehand.

7 "On this 5th day of February, 1948

8 "At Fujisawa

9 "DEPONENT: /s/ MATSUSHIMA, Shikao"

10 I shall not offer the next document, namely,
11 defense document No. 3081, a doctor's certificate con-
12 cerning the illness of MATSUSHIMA, Shikao.

13 I now wish to tender for identification only
14 IPS document 4091 and offer for evidence an excerpt there-
15 from, IPS document 4091-A, as a defense document. I
16 understand the prosecution has no objections to this
17 tender.

18 THE PRESIDENT: Where are the copies of it?
19
20
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25

Admitted on the usual terms.

1 CLERK OF THE COURT: Your Honor, I cannot
2 tell whether it is a prosecution document or a defense
3 document.

4 THE PRESIDENT: It is a defense document
5 marked IPS document 4091. It is no use saying it is
6 a prosecution document; it isn't. It used to be, but
7 it is now a defense document.

8 CLERK OF THE COURT: Defense document 4091-A
9 will receive exhibit No. 3911.
10

11 (Whereupon, the document above re-
12 ferred to was marked defense exhibit No. 3911
13 and received in evidence.)

14 LR. SHIMANOCHI: I now read exhibit No. 3911.

15 "Commander-in-Chief of the Navy

16 "Berlin, 5 March

17 "Notes Taken at a Conference of the Commander-
18 in-Chief, Navy, with the Fuehrer in his Headquarters
19 at Vinnitsa, on 26 February 1943.

20 "Page 14, Paragraph 4.

21 "The Commander-in-Chief, Navy, reports that
22 the Japanese Admiral NOMURA had mentioned that the
23 Japanese Navy was planning to use its submarines
24 against merchant shipping and that it had asked
25 Ambassador OSHIMA and Foreign Minister von Ribbentrop

1 to request that two German submarines be put at Japan's
2 disposal. The Commander-in-Chief, Navy, explained
3 that nothing would be gained in a military way by
4 turning over the submarines, since he did not believe
5 that they could be produced in large numbers in Japan
6 for materials reasons.

7 "The Fuehrer favored the idea of releasing
8 one submarine to the Japanese because we had to make
9 return-shipments for the rubber. If we found it
10 difficult to carry out these return-shipments in
11 high grade steel and finished products, such as machine
12 tools, it would be easier to deliver a submarine. He
13 will not decide the matter until the demand has taken
14 a more concrete form.

15 "Signed: Doenitz

16 "Countersigned: Lieutenant Commander Pfeiffer."

17 The next document on our order of proof, IPS
18 document 3361, will not be offered.

19 Further evidence will be tendered by Mr.
20 Cunningham.

21 THE PRESIDENT: Mr. Cunningham.

22 MR. CUNNINGHAM: If the Tribunal please, in
23 order to save time on the next group of documents it
24 is suggested that a general explanation be made as to
25 the purpose of the documents at one time, and that

1 each document be offered with the understanding that
2 it is intended to meet the rebuttal evidence, direct
3 and inferential; that no argument will be made on
4 the presentation of the document recommending its
5 merits or on the objection made to the document; that
6 the Tribunal can peruse the document in much less time
7 than it will take to argue its admissibility and accept
8 or reject it.

9 THE PRESIDENT: Perhaps we could, if we had
10 copies, but we haven't any so far.

11 I am told the Clerk of the Court has no
12 copies of these documents.

13 MR. CUNNINGHAM: Well, I am quite sure that
14 the general distribution was made days ago. By the
15 time I get through with this introduction the documents
16 will probably be here. They will be in here by that
17 time. In five or ten minutes they ought to be here
18 because the order of proof has been out ever since
19 Friday.

20 The documents will be presented one by one.
21 They each bear on some prosecution document or exhibit.
22 In this manner we can present these documents in a
23 few minutes, while if each one is argued it will require
24 hours. If we follow the procedure that was required
25 by the prosecution and call attention to the document

1 and the pages of the record and the exhibits which
2 the document is designed to answer, it will require
3 perhaps a couple of days, especially if specific ob-
4 jections have to be answered. The documents are so
5 short it will only require a minute to peruse them,
6 if perhaps one minute each to look them over.

7 I hope this procedure meets with the approval
8 of the Tribunal.

9 THE PRESIDENT: You can make your argument
10 as short as you wish, Mr. Cunningham. If we want
11 further assistance from you, we will not hesitate to
12 ask and we may.

13 We have no copies, yet.

14 MR. CUNNINGHAM: Well, I will make my general
15 presentation. It will take a couple of minutes.

16 The prosecution in the very late stages of
17 the case presented more documents in their rebuttal
18 than we presented in the whole of OSHIMA's case.

19 THE PRESIDENT: We have no complaints about
20 the length of the list as long as it is in the interests
21 of justice.

22 MR. CUNNINGHAM: That observation obviates
23 the necessity of the next paragraph in my explanation.

24 Our first documents deal with the negotiations
25 for the non-Aggression Pact between Germany and Russia.

1 As the Tribunal will recall, this pact was the cause
2 of the rupture of negotiations between Germany and
3 Japan. What we did not know then, but do have docu-
4 ments to prove now, is that the negotiations began
5 long before the present record discloses. Since it
6 was Ambassador OSHIMA's mission to watch closely the
7 relations between Russia and Germany, these documents
8 show that he was kept in the total dark which proved
9 lack of cooperation rather than conspiracy with the
10 Nazi leaders, its result was disagreement, causing the
11 resignation of the ambassador.

12 The prosecution offered HARADA Memoirs 313
13 to 336 which bore directly upon the negotiations of
14 1938-39. Each of these dealt with the actions being
15 taken in Germany. And I suggest that each step in
16 the negotiations between Ribbentrop and OSHIMA in
17 Germany corresponded to a corresponding step between
18 Ribbentrop and Molotov and the German ambassador in
19 Moscow. Each was offsetting the other.
20

21 I now offer defense document 3072, which is
22 the State Department Publication of Nazi Foreign Office
23 Documents. 3072-B is the first document.

24 THE PRESIDENT: The document we are holding
25 now is defense document 3072-A. It is headed "Excerpt
from State Department Publication of Nazi Foreign Office

Documents."

1 MR. CUNNINGHAM: The distribution is premature.
2 I have not offered that document. I have only offered
3 document 3072, which is the parent document for
4 identification. 3072-B, an excerpt therefrom, is
5 now offered in evidence.

6 THE PRESIDENT: There is some confusion here.
7 We are holding document 3072-A.

8 This is another excerpt from the same source,
9 General Vasiliev.

10 GENERAL VASILIEV: I think I may be permitted
11 to ask Mr. Cunningham to clarify certain points with
12 regard to the presentation of these documents.

13 First, whether Mr. Cunningham thinks that the
14 presentation of these documents complies with Rule
15 6 (b) of the Charter. Second, what specific document
16 of the prosecution presented in rebuttal does this
17 document rebut? Is there any certificate as to the
18 correctness of the translation from the German language?
19 Are the originals of the document presented for
20 identification?

21 I was compelled to ask these questions because
22 the Honorable Members of the Tribunal see for themselves
23 in what way the documents were presented.

24 If the documents are important as Mr. Cunningham
25

1 says, their importance doesn't correspond to the negligent
2 way in which they were prepared. I would like Mr.
3 Cunningham to clarify those points which I asked him.

4 THE PRESIDENT: Mr. Cunningham.

5 MR. CUNNINGHAM: Well, if the Tribunal please,
6 the only point which needs clarification is the
7 authenticity of the document, and it is my understanding
8 that the Charter provides that official publications
9 of one of the Allied nations is not -- it is not
10 necessary to have any certification whatever. A
11 perusal of the document will indicate that it is an
12 official document of the United States Government.

13 THE PRESIDENT: Is there anything further
14 you want, General Vasiliev?

15 GENERAL VASILIEV: Yes, certainly, your Honor,
16 but I don't see that this clarification is absolutely
17 up to the point, your Honor. For a long period of
18 time we all thought that we were obliged to comply
19 with the Rule 6(b) of the Charter. Why Mr. Cunningham
20 made an exception and why he doesn't want to comply
21 with that rule, I do not know. Therefore that
22 constitutes a gross violation of our elementary rights.
23 And from the very beginning we do not know with what
24 documents we have to deal. These are small excerpts
25 and we have no full body of documents. Is the Tribunal

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1 ready now to consider each document separately which
2 was not done before in similar circumstances?
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1 ~~THE PRESIDENT:~~ I know of no other course
2 at present. We must consider each document separate-
3 ly. It may be that the decision on one document will
4 cover others. The Members of the Tribunal would like
5 to know the materiality of this material.

6 GENERAL VASILIEV: May I continue my objec-
7 tion, your Honor?

8 THE PRESIDENT: Mr. Cunningham, we want you
9 to answer the question on the materiality.

10 MR. CUNNINGHAM: That takes me back, your
11 Honor, to the second point that I tried to eliminate.
12 In presenting the evidence of the defense in the
13 general phase, in the Pacific, and during the personal
14 phase of Ambassador OSHIMA, considerable emphasis was
15 placed by the prosecution upon the termination of the
16 negotiations for the strengthening of the terms of
17 the Anti-Comintern Pact. In their cross-examination
18 and their presentation of documents they inferred the
19 proposed agreement between Japan and Germany was an
20 aggressive military alliance which was proposed
21 against other nations than Soviet Russia.

22 We had no witnesses or documents then to show
23 the Tribunal the full significance of the action of
24 Germany and Russia in concluding the non-aggression
25 pact, which shattered the Japanese-German friendship

and cemented the relations between Germany and Russia.

1 Now, before the Tribunal adjourned it was stated that
2 newly discovered evidence would be presented. We now
3 offer these documents. They were not available until
4 just a few days ago and were processed during the
5 recess.

6 If the Tribunal please, by the Tribunal
7 perusing each of these documents they can tell at a
8 glance just what document bears upon what issue, and
9 what I am trying to avoid is extensive argument on each
10 one. It will only take us an hour to go through the
11 whole list.

12 THE PRESIDENT: Well, Mr. Cunningham, we are
13 going into conference on these documents and we would
14 like to have copies of them all for that reason. The
15 consensus of opinions of the Members is that this
16 document is irrelevant, and more than one Member
17 thinks it is wilfully offensive. I haven't read it
18 carefully myself. That the other documents are like
19 we don't know; we must peruse them first.

20 MR. CUNNINGHAM: Well, if your Honors please --

21 GENERAL VASILIEV: May my objection be heard
22 before the Court adjourns?

23 THE PRESIDENT: Yes, you may object.

24 GENERAL VASILIEV: I object to the introduc-
25

1 tion of the whole group of these documents on the
2 following grounds:

3 The decision of the Tribunal of January 30,
4 1948, record page 38,596, gave the defense the right
5 to offer only those documents which rebut the prosecu-
6 tion evidence introduced in the rebuttal phase. In
7 this case not a single of these defense documents comes
8 under this decision. Even only on this ground this
9 document and all the rest of the documents in this
10 group should be rejected. In order to admit them it
11 would be necessary to reopen the general phase of the
12 defense case, and therefore to reopen the rebuttal phase
13 of the prosecution. If so, this trial will never end,

14 Secondly, these documents have no relevancy
15 whatsoever to the issues involved in this case. The
16 American defense counsel, and especially Mr. Cunning-
17 ham, not for the first time -- it would have been very
18 satisfactory if that was for the last time -- show
19 they do not want to take into consideration the fact
20 that the Soviet Union does not argue here with the
21 Japanese Empire either in an arbitration court or at
22 a round table. The Soviet Union is represented in this
23 Tribunal for the purpose of trying major war criminals,
24 and the latter have the right to give through defense
25 counsel their explanation with regard to the charges

1 against them, and they have only that right. At any
2 rate, they have no right to direct counter charges
3 against any of the powers represented here. That would
4 have directly violated the provisions of the Charter
5 and would have grossly distorted the aims pursued by
6 the Tribunal.

7 These documents, which are irrelevant, are
8 introduced for the propaganda purposes directed against
9 the countries represented at this Tribunal. The
10 defense in general and Mr. Cunningham in particular
11 repeatedly tried to involve this Tribunal into sharp
12 political discussions of the present date which are
13 connected with the settlement of the post-war problems;
14 and as far as I understand, they are also trying to
15 sow the seed of discord among the countries represented
16 here at this Tribunal, who, up to this time, have been
17 carrying on their common work in friendly cooperation.

18 This should give enough grounds for the rejection
19 of all these documents as a matter of principle;
20 therefore I do not intend to specifically discuss each
21 document separately. I want to refer to the fact that
22 in the Nuernberg Trial there was a similar case and
23 not a single document of such kind was admitted there.
24 I might also refer to a number of cases where this
25 Tribunal rejected some documents tendered by the de-

1 fense which were irrelevant to the issues involved in
2 this case. Specifically, I refer to page 17,635, where
3 a matter of the relations between the Soviet Union
4 and Poland was discussed, and the number of similar
5 questions with regard to the relations with the "Western
6 Powers, record pages 17,460, 17,463, 24,272, and others.

7 I do not touch upon other violations which
8 are made by the defense in introducing these docu-
9 ments. Specifically, we did not have the opportunity
10 to see the originals of these documents. We don't know
11 whether the documents are presented in their entirety
12 or only excerpts are presented out of them. We don't
13 know whether the translation is correct. This, for the
14 second time, proves that the documents are presented
15 for propaganda purposes.

16 THE PRESIDENT: We will recess for fifteen
17 minutes.

18 (Whereupon, at 1045, a recess was
19 taken until 1126, after which the proceedings
20 were resumed as follows:)
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1 MARSHAL OF THE COURT: The International
2 Military Tribunal for the Far East is now resumed.

3 THE PRESIDENT: We have carefully perused
4 all the documents on Mr. Cunningham's order of proof
5 of which we have copies. The whole of those documents
6 relate to the relationship between Russia and other
7 European countries. Only two or three make any refer-
8 ence to Japan. The whole of the documents are irrelevant
9 to any issue that has to be decided here -- are
10 irrelevant to any issue that has to be decided. More-
11 over, as Mr. Cunningham pointed out, the Japanese were
12 wholly unaware of the communications passing between
13 Russia and the other countries, more particularly
14 Germany, as contained in those documents.

15 The whole of the documents are rejected and
16 the objection is upheld.

17 Major Furness.

18 MR. FURNESS: If the Court please, the witness
19 SUZUKI which the Court directed be called here for cross-
20 examination is now in the building and I assume that
21 he should go on before Mr. Logan's evidence goes on
22 on mitigation. But I leave it to the Tribunal.

23 THE PRESIDENT: You may proceed as you suggest.
24 Mr. Cunningham.

25 MR. CUNNINGHAM: While we are waiting, your

1 Honor, may I have an order of the Tribunal releasing
2 this document which was offered for identification so
3 I can return it to its source today?

4 THE PRESIDENT: Is there any objection?

5 We make an order accordingly?

6 - - -

7 T A D A K A T S U S U Z U K I, recalled as a
8 witness on behalf of the defense, having been
9 previously sworn, testified through Japanese
10 interpreters as follows:

11 DIRECT EXAMINATION

12 MR. FURNESS: If the Court please, although
13 the affidavit is already in evidence I suppose I should
14 have this witness identify it.

15 May the witness be shown the original of
16 exhibit 3898?

17 BY MR. FURNESS:

18 Q What is your name?

19 A SUZUKI, Tadakatsu.

20 Q What is your residence?

21 A Yokohama.

22 Q What position do you now hold?

23 A I am Chief of the Yokohama Branch of the
24 Liaison Coordination Office.

25 Q Was that generally called the Central Liaison

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1 Office?

2 A Yes.

3 (Whereupon, a document was handed to
4 the witness.)

5 Q Is the paper which has just been handed to
6 you, exhibit 3898, your affidavit?

7 A Yes.

8 Q Are the facts stated therein true and correct?

9 A Yes.

10 Q You signed and swore to it?

11 A Yes, I did.

12 MR. FURNESS: You may cross-examine.

13 THE PRESIDENT: Colonel Mornane.

14

15 CROSS-EXAMINATION

16

17 BY COLONEL MORNANT:

18 COLONEL MORNANE: Could the witness be shown
19 exhibit 76, if the Tribunal please?

20 (Whereupon, a document was handed to
21 the witness)

22 Q I refer you, witness, to Article 1, which I
23 will read:

24 "The Minister of Foreign Affairs shall control
25 affairs relating to the conduct of political affairs
concerning foreign countries, to the protection of

1 Japanese commercial affairs in foreign countries and
2 to Japanese subjects residing in foreign countries, and
3 direct and supervise Japanese Diplomatic and Consular
4 Officers."

5 Now, Witness, under that article the Japanese
6 Foreign Office was required to see that treaties between
7 Japan and other countries were carried out both by Japan
8 and by the other countries as far as they could?

9 MR. FURNESS: If the Court please, I object
10 to the question on the ground that it goes far beyond
11 the scope of this affidavit and for the more important
12 reason that it calls for a conclusion of this witness.
13 It is purely conclusion. The Court has rejected the
14 conclusions of diplomats and I suggest that it should
15 reject this question as calling for such a conclusion.

16 THE PRESIDENT: I judge you are questioning
17 him on a document already in evidence.

18 COLONEL MORNANE: That is so, your Honor.

19 THE PRESIDENT: Well, couldn't you leave it to
20 summation? Do you wish to test his credit on it?

21 COLONEL MORNANE: It isn't a question of test-
22 ing his credit, if your Honor pleases.

23 THE PRESIDENT: Well, then what is the use of
24 cross-examining him on a document already in evidence?

25 COLONEL MORNANE: If the Tribunal pleases,

1 throughout the witness' affidavit he refers to what
2 power and what jurisdiction the Foreign Ministry had
3 with regard to prisoners of war. He refers, in
4 addition, to a bureau set up within the Foreign Ministry.
5 He suggests that that bureau did not have any real
6 responsibility with regard to prisoners of war.

7 THE PRESIDENT: Well, that document contra-
8 dicts him. At most you can expect an admission that
9 he was wrong and, therefore, you destroy his credit.

10 COLONEL MORNANE: With great respect, your
11 Honor, I don't agree with that. I submit that his
12 affidavit is susceptible of some other explanation.

13 THE PRESIDENT: Has he left anything obscure
14 that could be rectified by that document?

15 COLONEL MORNANE: He has left something ob-
16 scure for the rectification of which this document can
17 form the groundwork.

18 THE PRESIDENT: Well, proceed to cross-examine
19 him. We will see whether you are correct or not.
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1 Q Would you answer the question, please,
2 Witness?

3 A I should like to have the question repeated.
4 (Whereupon, the question was read
5 by the official court reporter as follows:
6 "Now, Witness, under that article the Japanese
7 Foreign Office was required to see that treat-
8 ies between Japan and other countries were
9 carried out both by Japan and by the other
10 countries as far as they could.")

11 A I think so.

12 Q Then, under that article the bureau to which
13 you refer was set up in the Foreign Office?

14 A I think it is possible to say that it was
15 established in connection with the passage in Article
16 1 referring to Japanese subjects residing in foreign
17 countries.

18 COLONEL MORNANE: Now, could the witness be
19 shown exhibit 3845, if the Tribunal pleases?
20

21 (Whereupon, a document was handed
22 to the witness.)

23 Q You are familiar with that draft, Witness?
24 You have seen that draft before, Witness, have you not?

25 A This draft was prepared in the Foreign Office
to obtain agreement within the Foreign Ministry before

1 the establishment of the bureau in charge of Japanese
2 nationals in enemy countries over which I presided.

3 Q Well, included in that draft is a statement
4 of "Data for Explaining at Cabinet Meeting re Internee
5 and P.O.W. Duties." Can't you find it, Witness?

6 A I have found it.

7 Q Now, was that data submitted to a cabinet
8 meeting?

9 A With regard to that I can't make any positive
10 reply. I think probably it was not submitted to a
11 cabinet meeting.

12 Q Why do you say that, Witness?

13 A In other words, what shall I say? The estab-
14 lishment of the bureau over which I presided was not
15 in accordance with the regulations governing the organ-
16 ization of the Ministry, but rather to unify and coor-
17 dinate in one department business which had been hand-
18 led by various bureaus and sections in the Foreign
19 Ministry.

20 Q Why then, Witness, was it set out in the
21 draft headed "Data for Explaining at Cabinet Meeting"
22 followed by a statement of what was to be explained?

23 A As I have said before, these documents were
24 prepared before the establishment of the bureau over
25 which I was chief, and they were prepared before my

1 time by my colleagues in the Foreign Ministry, and I
2 had no direct concern with them.

3 Q Witness, I draw your attention to the words
4 appearing immediately under cabinet meeting: "The
5 Foreign Ministry has, with Minister SUZUKI who returned
6 recently to Japan from Egypt and who has been ordered
7 to engage temporarily in Foreign Ministry Duties -
8 as their chief, arranged to have several diplomats and
9 consulate members . . . engage in the following duties."
10 Do you still say that this document was prepared be-
11 fore your return?

12 A No, I did not say that. I returned to Japan
13 in August of that year, and the time when I began my
14 work in this connection was later, after arrangements
15 had been completed within the Foreign Ministry. Addition:
16 After arrangements had been made in the Foreign Minis-
17 try in accordance with the plans set forth in this docu-
18 ment, and it was only after that that I was approached
19 to take over the job.

20 Q Well, then the statement in this document
21 that on the 19th of November 1942 the Foreign Ministry
22 had already arranged with you is incorrect?

23 A Where does it say that?

24 Q Immediately under the head "Data for Explain-
25 ing at Cabinet Meeting re Internee and P.O.W. Duties

1 (November 19, 1942 'JO'-2)

2 "The Foreign Ministry has, with Minister
3 SUZUKI who returned recently to Japan from Egypt. . ."
4 then it goes on ". . .arranged to have several diplo-
5 mats. . ."

6 A Well, on seeing this draft here I see that
7 it was approved on the 14th of November, and I think
8 that I was approached on the matter after that day.
9 Hence, I do not know how this document was handled,
10 nor do I know whether the data prepared for the cabinet
11 meeting -- data prepared for explanation at the cabinet
12 meeting was used or not. And, therefore, as I have
13 said before, I cannot say anything definite or positive
14 about this.

15 Q Well, now, Witness, this document laid down
16 the duties of your particular office, in this bureau?

17 A Yes, it was laid down once, but there are
18 some mistakes. Correction: They were laid down pro-
19 visionally, but there are some mistakes.

20 THE PRESIDENT: We will adjourn until half
21 past one.

22 (Whereupon, at 1200, a recess
23 was taken.)
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The Tribunal met, pursuant to recess, at 1330.

MARSHAL OF THE COURT: The International
Military Tribunal for the Far East is now resumed.

THE PRESIDENT: Captain Kraft.

LANGUAGE ARBITER (Captain Kraft): If the
Tribunal please, the following language corrections
are submitted:

Record page 15,907, line 22, delete "your"
and substitute "my."

Record page 38,689, line 25 to page 38,690,
line 1, and exhibit No. 3880, page 3, line 16, place
the phrase "thrombosis of the brain" in parenthesis.

THE PRESIDENT: Colonel Mornane.

- - -

T A D A K A T S U S U Z U K I, recalled as a
witness on behalf of the defense, resumed the
stand and testified through Japanese interpreters
as follows:

CROSS-EXAMINATION

BY COLONEL MORNANE (Continued):

Q Witness, with regard to exhibit 3845,
MATSUMOTO, who was Foreign Vice-Minister at the time
of the institution of your office, has shown that it

1 was approved by the Foreign Ministry. You would not
2 deny that, would you?

3 A Yes.

4 Q And the duties of your office under that
5 exhibit included looking after business relating to
6 treatment of prisoners of war?

7 A Perhaps unless I gave you some explanations
8 in detail I would not be able to give you a definite
9 reply to that question.

10 Q At all events the exhibit speaks for itself.
11 I will leave it at that.

12 Now, Witness, in your affidavit you state
13 that you were unable, or your bureau was unable to
14 arrange for visits to prisoners of war camps. That was
15 due to the fact that the army would not allow your
16 people to visit those camps; is that not so?

17 A Yes, that is so.

18 Q And by army you would mean the War Ministry?

19 A Yes.

20 Q And you know that very frequently there were
21 long delays on the part of the War Ministry in answer-
22 ing protests which had been transmitted by your
23 bureau to the War Ministry?

24 A Yes, there were considerable occasions when
25 delays took place.

1 Q Now, take the protest you refer to in your
2 affidavit dated February 1944, in regard to the
3 Philippines. That protest pointed out that no reply
4 up to that time had been received to a protest lodged
5 on the 23rd of December, 1942, did it not?

6 A Could I be shown the relevant portion in my
7 affidavit?

8 Q You can read English, can you not, Witness?
9 If you will look under paragraph 5 on page 5 of the
10 English version of your affidavit --

11 A Will you give me the page number?

12 Q That is page 5, paragraph 5 of the English
13 copy of your affidavit.

14 A May I have the question put to me again
15 referring to the relevant portion in this paragraph.

16 COLONEL MORNANE: Will the reporter repeat
17 the question?

18 (Whereupon, the Japanese court
19 reporter read.)

20 A Yes, I recall that.

21 Q And I take it you were disturbed over this
22 long delay?

23 A Of course I was disturbed.

24 Q And you mentioned the matter to the Foreign
25 Minister, Mr. SHIGEMITSU, at the time?

1 A I think I did.

2 Q And, similarly, with other protests long
3 delays took place?

4 A Before replying to that I should like to
5 refer back to another matter, to a previous matter.
6 If my recollection is not erroneous, I think with
7 regard to protests with regard to which replies
8 were delayed provisional replies were made in the
9 interim. And I recall that when replies were made
10 to long protests, replies were also made to protests
11 regarding which replies had been delayed.

12 Q I suggest to you, Witness, that the only
13 reply given to this protest prior to the 24th of
14 April of 1944 was a note of the 26th of May, 1943,
15 saying that inquiries would be made.

16 A Not having the document on hand, I am
17 unable to give you a definite reply, but I think
18 that was one of the interim replies that I referred
19 to.
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1 Q Well, now, witness, will you have a look
2 at your document, exhibit 2173. This purports to be
3 the covering letter of the protest of the 12 of February
4 '44. From that letter, I suggest it is shown that
5 no written communication was made by the Foreign
6 Ministry to the War Ministry in regard to this protest
7 or the protest of the 23d December '42 later than the
8 27th of March of 1943.

9 A I do not think there was such a case. At
10 any rate, there were many documents, and unless I am
11 shown these documents I would not be able to give you
12 a definite reply.

13 Q But that is your letter covering the protest
14 of the 5th of February '44, and it refers to your
15 previous communications to the War Ministry of the
16 15th of January and the 27th of March; and had there
17 been any other communications you would have referred
18 to them in that letter?

19 A Well, they are not necessarily all referred
20 to. But as I have already told you, many documents
21 were handled, and unless I am shown the documents
22 you are referring to, not having sufficient recollection,
23 I would be unable to reply.

24 COLONEL MORRANE: May the witness be shown
25 exhibit 2024, if the Tribunal please.

(Whereupon, a document was shown

1 to the witness.)

2 Q If you look at page A-1, you will see letter
3 of the 23d December, '42, and document A-2 of the 5th
4 of February, '44.

5 MARSHAL OF THE COURT: Would you give us that
6 page again, Colonel Mornane?

7 COLONEL MORNANE: It is document A-1 and
8 document A-2.

9 Q Do you see, Witness, from those letters,
10 that no reply to the protest, to the subject matter of
11 the protest, was dispatched between 23 December '42 and
12 the 5th of February, '44?

13 A Well, I have not read the entire text of
14 these protests, but as I see it, there are many
15 questions involved, and the Foreign Office, I believe,
16 made contacts with all the various quarters concerned
17 with the matter and did its best to draft a reply to
18 the protests; and such being the case, I presume there
19 were, as a matter of fact, delays.
20

21 Q I take it from your affidavit itself -- just
22 to shorten the matter -- there were many cases where
23 you were pressing for replies to protests?

24 A Yes.

25 Q And in those cases you brought the fact to

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the notice of your Foreign Minister?

1 A Of course, when very serious delays took
2 place I brought the matter to the attention of the
3 Foreign Minister -- I think I brought the matter to
4 the attention of the Foreign Minister; but as for
5 most of the work, or the work generally, I myself, as
6 the person in charge, did my utmost to clear up the
7 matter.

8 Q Now, you have told us in your affidavit that
9 Mr. SHIGEMITSU ordered you to use material information
10 from enemy sources also with regard to securing better
11 treatment of prisoners of war?

12 A Yes, I have so written.

13 Q What were those sources? Would they include
14 broadcasts from enemy countries?

15 A Yes, they, too, were included.

16 Q And how would they come to your knowledge?

17 A It was possible to listen to broadcasts from
18 overseas during the war in the Foreign Office --
19 shortwave broadcasts.

20 Q And I suggest to you that the Foreign Office
21 were monitoring shortwave broadcasts from other
22 countries and distributing copies of the text to
23 officers in the Foreign Office, is that correct?

24 A Such was not the case.
25

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1 Q Where did you, yourself, get your broadcasts
2 from? Did you listen in yourself?

3 A To explain somewhat at length, it was not
4 only in the Foreign Office, but the War Office and
5 the Navy Office also had such facilities; and what
6 the Foreign Office was able to listen to with regard
7 to broadcasts relating to prisoners of war, the
8 Foreign Office utilized.
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1 Q It was the practice of all of those offices to
2 listen to the short-wave broadcasts?

3 A At any rate, the Foreign Ministry had facilities
4 in its own premises to listen to such broadcasts.

5 Q And the Foreign Office did in fact circulate
6 transcripts of those broadcasts around the Foreign Office?

7 A Yes.

8 Q And I suppose that they also disturbed Mr.
9 SHIGEMITSU, the allegations made in the broadcasts as to
10 the treatment of prisoners of war?

11 A Yes, I think they were called to the attention
12 of Foreign Minister SHIGEMITSU.

13 Q And in May of 1944, when Mr. SHIGEMITSU decided
14 on his plan to have a Cabinet Committee set up to dis-
15 cuss these things, it is quite obvious that he was quite
16 worried about the fate of prisoners of war?

17 A It is a fact that Foreign Minister SHIGEMITSU
18 had very serious interests in the question of prisoners
19 of war.
20

21 Q What was it that prevented his plan, with
22 regard to having this plan set up, being carried out?

23 A That was because matters relating to prisoners
24 of war were in the charge of and under the jurisdiction
25 of the Army. Inasmuch as such matters were primarily
and exclusively handled by the Army and departments other

1 than the War Department -- departments outside of the
2 military could not on their own take up the matter.

3 Q Did the War Minister refuse to agree to the
4 plan?

5 A I do not know whether the War Minister himself
6 refused.

7 Q Did Mr. SHIGEMITSU discuss the matter in the
8 Cabinet?

9 A I do not think so.

10 Q You don't think so. Well, now, you say that
11 Mr. SHIGEMITSU took the matter up with the Supreme
12 Council for the direction of the war in October, 1944.
13 What happened as a result of that?

14 A As I have indicated in my affidavit, as a
15 result considerable improvements were realized.

16 Q How do you know that?

17 A It is written there that the Prisoner of War
18 Information Bureau dispatched personnel to the various
19 areas and saw to it that improvements were effective,
20 and they were. And I also refer to them in the paragraph
21 previous to the one now in question in my affidavit.

22 Q You still received protests after October of
23 '44?

24 A Yes, they did.

25 THE MONITOR: "Yes, we did."

1 Q And during the whole time that you were in
2 office you were seeking to obtain permission for repre-
3 sentatives of protecting powers to visit prisoner of war
4 camps?

5 A Very fervent desires were expressed.

6 Q And apart from desires, you attempted to get the
7 War Ministry to authorize protecting power representatives
8 to go to these camps?

9 A I myself well understood the importance and
10 value of obtaining permission to visit prisoner of war
11 camps and on my part did everything in my power to
12 realize such visits.

13 Q And you knew under Article 86 of the Geneva
14 Convention of 1929 that it was required that represent-
15 atives of protecting powers should be allowed to visit
16 prisoner of war camps?

17 A Yes, very well, but at the same time Japan had
18 not ratified the Geneva Convention of 1929, and so when
19 the war commenced the Japanese Government on its own
20 part declared its intention to apply the provisions of
21 that constitution mutatis mutandis within the extent per-
22 mitted by domestic laws, that is, to apply the various
23 terms of the Treaty mutatis mutandis.

24 Q We are not concerned for the moment, Witness,
25 with that. That is a matter for the Tribunal. Your

1 state of knowledge was that you knew under Article 86 of
2 the Convention that it was required that representatives
3 of protecting powers be allowed to visit prisoner of war
4 camps?

5 A Well, in order to reply to that question, I will
6 have to tell you what I gave you in the latter part of
7 my answer.

8 Q Well, you have already told us that you did
9 know that under Article 86 of the Convention it was re-
10 quired that protecting power representatives should be
11 allowed to visit prisoner of war camps. That is a
12 correct statement of your knowledge, is it not?

13 A Yes, I know, and it is a fact that that is the
14 contents of the Article itself -- I know and I knew.

15 Q Well, now, did you bring to the attention of
16 Mr. SHIGEMITSU the fact that representatives of the pro-
17 tecting powers were clambering for permission to visit
18 prisoner of war camps?

19 A Yes, I did.

20 Q Now, did Mr. SHIGEMITSU ever take any of these
21 matters up with the Cabinet as regards the treatment of
22 prisoners of war?

23 A I do not think **Foreign Minister SHIGEMITSU**
24 himself submitted anything of the kind to the Cabinet
25 meetings.

1 Q And in the normal course of events, if he had
2 decided to do so you would have been required to prepare
3 some statement of facts for him?

4 A Yes, I think that is quite possible.

5 Q And you were not required to prepare such a
6 statement in fact?

7 A I have no recollection.
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1 Q Now, do you know whether the accused
2 SHIGEMITSU ever discussed the matter with the accused
3 TOJO?

4 A That Foreign Minister SHIGEMITSU spoke to
5 Minister TOJO I have heard from Foreign Minister
6 SHIGEMITSU himself. If permitted I should like to say,
7 with regard to the question of whether or not this
8 matter was brought up at the cabinet meeting, that
9 according to Japanese practice and custom one cannot
10 conceive of the question of the prisoners of war --
11 anything relating to prisoners of war being taken up
12 by the cabinet unless that matter were submitted by
13 the War Minister.

14 Q Now, Witness, did you yourself ever discuss
15 the matter with the accused KIMURA at any of these
16 conferences you had?

17 A No.

18 Q Or with the accused SATO?

19 A I do not think there was any discussion with
20 him.

21 Q Did SATO attend any of these conferences you
22 have referred to in your affidavit?

23 A No.

24 Q And you yourself never inspected any prisoner
25 of war camp?

1 A Once or twice I did visit prisoner-of war
2 camps.

3 Q And you were permitted to do so by the Army?

4 A Yes, I was especially permitted on those
5 occasions.

6 Q And which camps did you visit?

7 A The camp in Nagoya.

8 Q You don't know the name of it, do you?

9 A I think it was called Atsumi.

10 Q And when did you visit that camp?

11 A In my recollection some time in the summer
12 of 1943.

13 Q And what have you to say as to conditions there?

14 A Well, there is nothing special for me to say.

15 Q There is just one more question. Did SHIGEMITSU
16 discuss with the accused KOISO the matter of treatment
17 of prisoners of war?

18 A In my recollection I think not. I do not
19 think there was any.

20 COLONEL MORNANE: That concludes the cross-
21 examination, if the Tribunal please.

22 THE PRESIDENT: Major Furness.

23 REDIRECT EXAMINATION

24 BY MR. FURNESS:

25 Q You were asked regarding your inspection

1 of the camp at Nagoya whether there was anything
2 special you wanted to say. Did you on that occasion
3 that you inspected the camp find anything seriously
4 wrong to report?

5 A No, I did not find anything in particular.

6 Q Now, you found then nothing particular upon
7 which complaints could be based; is that correct?

8 A No, there was nothing that I could find.

9 MR. FURNESS: That is all, your Honor.

10 May the witness be released on the usual terms?

11 THE PRESIDENT: He is released accordingly.

12 (Whereupon, the witness was excused.)

13 - - -

14 THE PRESIDENT: Mr. Logan.

15 MR. LOGAN: If the Tribunal please, on behalf
16 of the accused KIDO.

17 The Tribunal has ruled that evidence in
18 mitigation shall be offered upon the completion of all
19 other evidence and before summation. This, of course,
20 is dissimilar to the practice in those countries where
21 proceedings in mitigation are held after the verdict
22 and before sentence.

23 It thus becomes incumbent upon the defense
24 to decide whether to offer mitigation evidence at this
25 time with its intendant inference of guilt, or

1 relinquish the right of presenting such argument
2 and/or evidence if the verdict of guilty is arrived
3 at by the Tribunal with respect to any of the accused.

4 In arriving at a decision to offer such
5 evidence at this time, I do so with a great deal of
6 hesitation because of the implication which might
7 result, but at the same time I feel that it is my
8 duty to my client and to the Tribunal to present such
9 evidence at this time rather than lose the right to
10 do so if it became necessary later on.

11 I am informed that in those countries where
12 such mitigation evidence is offered before verdict,
13 that there is no implication of guilt. Upon the
14 assumption that there will be no such implication with
15 respect to KIDO I will proceed to offer documents.

16 THE PRESIDENT: There will be no such
17 implication.

18 MR. LOGAN: Prosecution has advised me that
19 they do not desire to cross-examine any of the witnesses
20 whose affidavits I will now offer.

21 I offer in evidence defense document 3055.

22 THE PRESIDENT: Mr. Comyns Carr.

23 MR. COMYNS CARR: May it please the Tribunal,
24 the prosecution also finds it difficult to follow the
25 effect of this procedure.

1 THE PRESIDENT: We are not going to permit
2 a discussion on the merits of the decision of the
3 majority.

4 MR. COLYNS CARR: Oh, no, your Honor, that
5 wasn't the purpose. But what I wanted to do was to
6 ask the Tribunal to clarify one matter in connection
7 with it. In my submission, if this evidence is
8 offered in mitigation it clearly is not evidence in
9 the main part of the case on the issue of guilt or
10 innocence.

11 THE PRESIDENT: It will be disregarded for
12 all purposes except the purpose of mitigating the
13 sentence of the particular accused, if it does mitigate
14 it, if he is sentenced, of course.

15 MR. COMYNS CARR: Your Honor, that is important
16 for this reason; that every one of these affidavits
17 which my friend is now tendering deals with a matter
18 which KIDO has himself dealt with in his own affidavit
19 and treated as matter purporting to be relevant to
20 the main issue of guilt or innocence and amounts, in
21 our submission, to an attempt under the guise of
22 mitigation evidence to corroborate KIDO's story in
23 his own affidavit which was treated then as evidence
24 on the other issue.
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1 THE PRESIDENT: It will be disregarded for the
2 purpose of determining guilt or innocence. I think I
3 should say that some judges object to any evidence in
4 mitigation at any stage.

5 MR. COMYNS-CARR: Your Honor, in regard to
6 this first affidavit, we object to it on the ground
7 that it could not amount to evidence in mitigation.
8 It is the statement of a police officer who arrested
9 a number of persons in 1940 who were charged with a
10 plot to murder certain people, and who says that the
11 arrested persons included KIDO amongst the persons whom
12 they desired to murder. It does not appear from the
13 affidavit why they desired to murder him. In our
14 submission such evidence is irrelevant and could not
15 amount to mitigation of any sentence that may be imposed.

16 MR. LOGAN: If the Tribunal please, the back-
17 ground of this attempted assassination is in evidence
18 by other witnesses and documents. This is offered in
19 mitigation to show that one month after he became Lord
20 Keeper of the Privy Seal KIDO stayed in office, carrying
21 on his work against the militarists, notwithstanding the
22 threats made on his life. The Tribunal has already
23 decided the relevancy of this evidence when it decided
24 to admit the testimony of the granddaughter of the accused
25 HIRANUMA testifying to the same circumstances surrounding

1 an attempt on his life, and the question of mitigation
2 came up in that discussion.

3 THE PRESIDENT: By a majority, the objection
4 is sustained and the document rejected.

5 MR. LOGAN: In view of the fact that the
6 prosecution does not intend to cross-examine this witness
7 I will skip document 3075, and offer in evidence document
8 3074.

9 MR. COMYNS-CARR: May it please the Tribunal,
10 this affidavit, in our submission, quite obviously,
11 if admissible at all, would only be admissible on the
12 main issue, and also only by tender at the time that was put
13 forward.

14 THE PRESIDENT: We haven't seen it yet, Mr.
15 Carr.

16 MR. COMYNS-CARR: It is the affidavit of YONAI,
17 who has previously been called as a witness. Paragraph
18 2, deals with the Senior Statesmen's conference at which,
19 TOJO was recommended as premier, and the only material
20 sentence in it is, in our submission, inadmissible --
21 the last four lines, in which he states, from an unknown
22 source, what he says KIDO's opinion was at the time.
23 That, we submit, is not admissible on that ground, and
24 even if it were proper evidence, it would be a matter
25 which couldn't go to mitigation, but, if anything, would

1 go to the main issue. The rest of it deals with peace
2 offers after the outbreak of war, as to which there is
3 also a great deal of evidence in existence already.
4 The sentence at the top of the last page of the affidavit
5 shows plainly the need of those offers. After the con-
6 ference, he says, he spoke with KIDO about a plan for
7 continuing the war, and KIDO said it was so poor he
8 thought it was impossible to continue the war and some-
9 thing must be done to restore the peace. In our
10 submission, peace offers under such circumstances and
11 for such reasons could not mitigate anything.

12 MR. LOGAN: If your Honor please, this
13 affidavit is offered for the purpose of showing that
14 KIDO, shortly after war commenced, was already talking
15 about offers to be made to restore peace, at a time
16 when the Japanese were riding high on the waves of
17 victory; that it was not possible at that time to talk
18 openly about restoration of peace, and this evidence
19 shows that he was discussing it and considering ways
20 and means of bringing it about at the earliest possible
21 moment. It also shows that later on, when there was a
22 plan proposed, proposing a method of continuing the
23 war, that KIDO was diametrically opposed to it and
24 still continued to do what he thought was right for
25 peace. All the statements in this affidavit, in my

1 submission, come squarely within this province of
2 mitigation.

3 THE PRESIDENT: By a jamority, the objection
4 is sustained and the document rejected.

5 We will recess for 15 minutes.

6 (Whereupon, at 1445, a recess was
7 taken until 1500, after which the proceedings
8 were resumed as follows:)

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1 MARSHAL OF THE COURT: The International
2 Military Tribunal for the Far East is now resumed.

3 THE PRESIDENT: Captain Kraft.

4 LANGUAGE ARBITER (Captain Kraft): If the
5 Tribunal please, the following language correction is
6 submitted:

7 Exhibit No. 3845, page 3, lines 6-11 and
8 record page 38,176, lines 8-15, delete the entire
9 paragraph and substitute the following: "The Foreign
10 Ministry made arrangements to have Minister SUZUKI,
11 who had recently returned to Japan from Egypt and was
12 temporarily assigned to duties at the Foreign Ministry,
13 he, d a small group of diplomats and consular officials,
14 who had returned home from enemy countries and who
15 were on the waiting list, handle the following matters
16 in conjunction with the Bureaus and sections concerned."

17 THE PRESIDENT: Thank you.

18 Mr. Logan.

19 MR. LOGAN: If the Tribunal please, before I
20 offer the rest of these documents I would just like to
21 make an observation that in view of the novelty of
22 having to offer mitigating circumstances at
23 this time, I am a little perplexed at the procedure
24 and particularly the attitude of the prosecution in
25 objecting to these documents. Since they are being

1 offered solely on the question of mitigation and not
2 as to the merits of the issue, it is a similar situa-
3 tion back home when statements are made or evidence
4 offered in mitigation after sentence. The prosecutor
5 never objects to the statements that are made at that
6 time.

7 THE PRESIDENT: That is so in British
8 countries; I can safely say that. At that stage
9 there is no jury and the judge can be trusted to
10 make the right use of the material. We have had
11 objections throughout this trial although there is
12 no jury.

13 MR. LOGAN: All those matters went to the
14 merits of the case but here in a question of mitiga-
15 tion it is just the same as the Tribunal or a court
16 calling the accused and saying, "Have you anything to
17 offer before we pronounce sentence?" And the accused
18 is usually given full latitude to say what he thinks
19 in his mind that would bear some weight on the passing
20 of any sentence. It is something personal between the
21 accused and the court and that is what we are doing
22 here. It has nothing to do with the merits. KIDO is
23 saying, If I am found guilty, I ask you to take these
24 things into consideration, what I did.
25

THE PRESIDENT: Proceed to present your

documents if you intend to present them.

1 MR. LOGAN: I offer in evidence defense
2 document 3051.

3 MR. COMYNS CARR: If the Tribunal please, I
4 have the same objection to this as to the last one.
5 It is not mitigation at all; it is an attempt to
6 bolster up part of the main case. It deals solely
7 with peace efforts after July 1944.

8 MR. LOGAN: It is not offered for the purpose
9 of bolstering up the main case; it is offered in miti-
10 gation, and if striving for peace at a time when a
11 country is at war is not mitigation then I would with-
12 draw the affidavit. Certainly this accused's efforts
13 to try to terminate the war goes to mitigation. If
14 we can't offer evidence in mitigation now we are going
15 to be foreclosed from ever doing it.

16 THE PRESIDENT: By a majority the objection
17 is overruled and the document admitted on the usual
18 terms.
19

20 CLERK OF THE COURT: Defense document 3051
21 will receive exhibit No. 3912.

22 (Whereupon, the document above
23 referred to was marked defense exhibit
24 No. 3912 and received in evidence.)
25

MR. LOGAN: I will read exhibit 3912, being

the affidavit of OKADA, Keisuke:

1 "I, OKADA, Keisuke, was appointed Admiral in
2 1924 and placed on the reserve list in January, 1938.
3 I was appointed Prime Minister in July, 1934, from
4 which post I resigned in March, 1936, when the Cabinet
5 resigned en bloc. I was a Senior Statesmen in 1944
6 and 1945.
7

8 "Before the end of the TOJO Cabinet in July
9 1944, I thought it necessary to have one who would
10 identify himself with restoration of peace by the
11 termination of hostilities join the Cabinet as a
12 Minister of State. I broached my idea to Baron
13 WAKATSUKI, Prince KONOYE, Baron HIRANUMA and Marquis
14 KIDO, then Lord Keeper of the Privy Seal, and obtained
15 their approval. To attain this, I made endeavors to
16 have Admiral YONAI reinstated in active service and
17 appointed Navy Minister to succeed Admiral SHIMADA, then
18 Navy Minister and concurrently Chief of Staff of the
19 Navy and spoke to many people to accomplish this, but
20 in vain.
21

22 "My efforts to have Admiral YONAI reinstated
23 in active service were successful when the KOISO Cabinet
24 was formed. The so-called KOISO-YONAI coalition
25 Cabinet came into existence with Admiral YONAI rein-
stated in active service and appointed Minister of the

1 Navy. When the SUZUKI Cabinet was formed on April 5,
2 1945 I worked hard and talked with many people. I
3 did my best to have Admiral YONAI and Mr. TOGO join
4 the Cabinet as Minister of the Navy and Minister of
5 Foreign Affairs, respectively, for the purpose of
6 restoring peace, by terminating hostilities, and
7 they did assume these posts.

8 "Sometime in April 1944 Marquis KIDO and I
9 had an extremely confidential talk about termination
10 of the war. The very nature of this subject required
11 extreme caution on our part. His ideas and mine
12 coincided that efforts should be made to end the
13 hostilities as quickly as possible, but that we would
14 have to wait for an opportune moment as it was not a
15 matter which could be forced. I had previously dis-
16 cussed this matter with Marquis MATSUDAIRA and asked
17 him to transmit my thoughts to Marquis KIDO. I had
18 many talks with Marquis KIDO thereafter about early
19 termination of the war. His efforts in this direction
20 have been recorded elsewhere, so I shall not repeat
21 them here, except to congratulate him for the success
22 of his heroic services."

23 I offer in evidence defense document 3050.

24 THE PRESIDENT: Admitted on the usual terms.

25 CLERK OF THE COURT: Defense document 3050

will receive exhibit No. 3913.

1 MR. COMYNS CARR: May it please the Tribunal,
2 this document is of the same character as the last
3 except that it only begins the story in February 1945.
4 We submit that it should be rejected on the same
5 grounds as Admiral YONAI's affidavit.
6

7 THE PRESIDENT: It was admitted thinking
8 there was no objection.

9 MR. LOGAN: Shall I read it, if the Tribunal
10 please?

11 THE PRESIDENT: It is admitted on the usual
12 terms.
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1 MR. LOGAN: I read defense document 3050,
2 exhibit 3913:

3 Deposition of HIROSE, Hisatada.

4 "1) In February, 1945, I was appointed
5 Minister of State without Portfolio and concurrently
6 Chief Secretary to the KOISO Cabinet, from which
7 posts, however, I resigned the same month. In Aug-
8 ust, 1945, I was appointed Mayor of Tokyo Metropolis,
9 from which post I resigned in January, 1946. I am
10 not connected with any government office now. I
11 have known Marquis KIDO intimately since 1938.

12 "2) Owing to my above mentioned relation
13 with Marquis KIDO, I thoroughly knew that Marquis KIDO
14 had been watching for a long time for a chance to
15 conclude the recent war, making great efforts. Es-
16 pecially, I may mention the following facts: the
17 circumstances under which he endeavored to appoint
18 Admiral YONAI, a pacifist, as Vice Prime Minister
19 when the KOISO Cabinet was formed in July, 1944; that
20 during the term of the said cabinet he repeatedly
21 expressed to me his desire for an opportunity to
22 realize peace, that he made efforts for forming the
23 cabinet headed by Admiral SUZUKI, Kantaro, a paci-
24 fist, April, 1945; and that he cooperated with
25 Admiral YONAI, the chief pacifist of SUZUKI Cabinet,

in making efforts to realize peace.

1 "Above all, sometimes I undertook to effect
2 communication between Navy Minister YONAI and the
3 Marquis for their cooperation. In those days, when
4 Marquis KIDO had to communicate with Navy Minister
5 YONAI that he wanted to have an informal talk with
6 the latter concerning the peace problem, I immediately
7 transmitted this to Navy Minister YONAI and obtained
8 his consent. As shown in this instance, I thoroughly
9 know how hard the two men worked for peace secretly
10 under the circumstances in those days. I distinctly
11 remember that after the conclusion of the war Navy
12 Minister YONAI said, 'after all, Marquis KIDO is
13 more responsible than any other for the conclusion
14 of the war.'"

15
16 I offer in evidence defense document 3068.

17 MR. COMYNS CARR: If it please the Tribunal,
18 this is merely an opinion expressed by Prince KONOYE
19 or alleged to have been expressed by Prince KONOYE
20 apparently in July or August, 1945. We submit it
21 is, if anything, only character evidence which was
22 expressly excluded in the order.

23 MR. LOGAN: I submit, if the Tribunal please,
24 this should be admitted for the same reason as the
25 two previous documents.

1 THE PRESIDENT: The objection is overruled
2 and the document admitted on the usual terms.

3 CLERK OF THE COURT: Defense document
4 3068 will receive exhibit No. 3914.

5 MR. LOGAN: I shall read defense document
6 3068, exhibit 3914:

7 "Deponent: HOSOKAWA, Morisada.

8 "(1) I married KONOYE, Yoshiko, daughter
9 of Prince KONOYE, Fumimaro in April 1936, and as his
10 son-in-law I naturally had many confidential and
11 private conversations with Prince KONOYE.

12 "I assumed the post of Secretary to the
13 Prime Minister under the second and third KONOYE
14 Cabinets from July 23, 1940 to October 16, 1941.

15 "Later, during the war, I acted as private
16 secretary to Prince KONOYE, in addition to other
17 duties and I assumed the post of Secretary to Prince
18 KONOYE who was Minister of State without Portfolio
19 in HIGASHIKUNI Cabinet from August 16, 1945 until
20 the resignation of the cabinet en bloc.

21 "(2) Prince KONOYE told me Marquis KIDO's
22 efforts for terminating the war. 'Marquis KIDO's
23 efforts for terminating the war have been indeed
24 magnificent.' I recall that Prince KONOYE often paid
25 this compliment to Marquis KIDO from the time when

1 the Prince was chosen as special envoy to the Soviet
2 Union (though he did not go to the Soviet Union) to
3 Japan's surrender."

4 I offer in evidence defense document 3052.

5 MR. COMYNS CARR: If it please the Tribunal,
6 this one ~~states~~ plainly in terms that it is merely
7 corroboration of KIDO's own affidavit. I am refer-
8 ring to the sentence at the end of paragraph 3. The
9 last part of it, from paragraph 6 and onwards, is
10 about an assassination attempt which KIDO himself
11 described in his affidavit and is merely corroborat-
12 ive of that. The Tribunal already rejected, on the
13 first document tendered, evidence of that type.

14 MR. LOGAN: I have no objection to deletion
15 of the last sentence of paragraph 3. The balance
16 of it, I submit, is the details of what happened in
17 the last few days of the war which was not gone into
18 in such detail as what we have here. I am not
19 offering it for corroboration; I am offering it in
20 mitigation.

21 THE PRESIDENT: Admitted on the extent ex-
22 pressed by Mr. Logan, that is, without that sentence.
23 The objection is overruled.

24 CLERK OF THE COURT: Defense document 3052
25 will receive exhibit No. 3915.

1 (Whereupon, the document above
2 referred to was marked defense exhibit
3 No. 3915 and received in evidence.)

4 MR. LOGAN: I read defense document 3052,
5 exhibit 3915, deposition of ISHIWATA, Sotaro:

6 "1). I held the office of the Imperial
7 Household Minister from June 4, 1945 to January 16,
8 1946.

9 "2). When on July 3, 1945, I was asked to
10 take the office of the Imperial Household Minister,
11 KIDO spoke to me emphasizing the pressed war situation
12 and the necessity of grasping the earliest possible
13 chance for peace negotiations. Accordingly, with a
14 firm resolve to work with him, I consented to take
15 up this office.

16 "3). After my appointment as Imperial
17 Household Minister I saw KIDO, Lord Keeper of the
18 Privy Seal, at least two or three times a week, as he
19 had his office room in the Imperial Household
20 Minister Building so that we could easily call on
21 each other. He told me he was firmly determined to
22 bring the war to a close, and bravely, patiently and
23 painfully fought oppositions until the war was fin-
24 ally terminated on August 15. He was one of the
25 people who contributed most to the quick realization

1 of the capitulation.

2 "4). With the desperate situation that came
3 to be clearly marked around July 20, 1945, KIDO
4 prepared himself for any violence such as assassina-
5 tion that might be used against him by the army.

6 "He told me he hoped that he might be
7 spared until the war had been successfully brought
8 to a close. But feeling the uncertainty of his life
9 he consulted me twice or three times about the person
10 who would possibly succeed him as Lord Keeper of the
11 Privy Seal in case he should be killed. The person
12 KIDO had in his mind was Baron SHIDHARA, Kijuro.
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1 "5. Since the beginning of August, Lord
2 Keeper KIDO and I had been talking about requesting
3 the Emperor to broadcast as we thought it was perhaps
4 the best way under the circumstances to keep to the
5 minimum limit the internal confusions that might
6 follow the capitulation. On August 11, KIDO called
7 on me. He said that he had talked with the Emperor
8 about His Majesty's broadcasting the report of the
9 termination of war, at which time the Emperor had
10 told KIDO to consult the Imperial Household Minister.
11 Hence he called on me. I told KIDO that as repre-
12 sentative of the Imperial Household Ministry, I had
13 no objection whatsoever to this plan.

14 "Again, on the evening of that day, KIDO
15 called on me and told me that the Emperor was ready
16 to broadcast. Thereupon I communicated with the
17 government and at once made necessary preparations for
18 the Imperial broadcasting.

19 "6. On August 14, 1945, a unit of the
20 Imperial Guards Division sieged the Imperial Household
21 Ministry Building, and scattered some mimeographed
22 bills. One of the items listed on them was: 'To rid
23 the Throne of the Lord Keeper of the Privy Seal, who
24 is a traitor, trying to terminate the war!' KIDO was
25 one of their black-listed persons.

1 "The leader of the insurgent army that night
2 was tracking KIDO and me. My subordinates in my
3 office led me to the vault in the basement of the
4 Imperial Household Ministry Building. It was about
5 3:00 a.m. on August 15 when I got to that room. KIDO
6 came to the same room some ten minutes later. KIDO
7 said: 'We may be discovered and killed any time. But
8 history has already turned to a new direction. The
9 war will be closed. I am completely ready to be
10 killed now!'

11 "General TANAKA, Commander of the Eastern
12 Area Army, hastened to the spot and forced the
13 insurgent army to withdraw.

14 So KIDO and I came out of the vault about
15 8:00 o'clock on the morning of the 15th."

16 I offer in evidence defense document
17 No. 3049.
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1 THE PRESIDENT: Mr. Comyns Carr..

2 MR. COMYNS CARR: May it please the Tribunal,
3 this is a six page affidavit describing in immense
4 detail how certain people went to search for KIDO and
5 tried to assassinate him around about the 16th of August
6 1945 and how they did not find him and how the police
7 ultimately besieged them in a park and ultimately
8 captured or killed them all. KIDO has already stated
9 the fact of his attempted assassination in his affidavit
10 which is not disputed and all this detail about the
11 activities of the police adds nothing to it.

12 MR. LOGAN: If the Tribunal please, this too
13 is offered in mitigation only to show the efforts that
14 were made to assassinate KIDO when he was carrying on
15 his duties under the threat of death. It also definitely
16 shows that these people were connected with the
17 military and it should be accepted for the same reasons
18 as the previous documents.

19 THE PRESIDENT: I think my colleagues have
20 the view that it doesn't add materially to the evidence
21 you have already given about KIDO's alleged part in
22 ending the war.

23 MR. LOGAN: I am perfectly willing to with-
24 draw paragraphs 6 and 7 which goes into the details
25 the prosecutor spoke about.

1 THE PRESIDENT: By a majority the objection
2 is sustained and the document rejected.

3 MR. LOGAN: If the Tribunal please, this
4 terminates the presentation of actual evidence, but
5 there are several other matters to be taken up now.
6 Mr. Brannon wants to say a few words.

7 (TESTIMONY CLOSED)

8 THE PRESIDENT: Mr. Brannon.

9 MR. BRANNON: If the Tribunal please, at the
10 close of the evidence we have a matter, perhaps extren-
11 eous to the substantive issues yet highly important
12 because of its precedent-making characteristics.

13 An examination of the record reveals that no
14 adequate explanation has yet been made as to why defense
15 counsel from one of the Allied Powers have served with
16 Japanese counsel throughout these proceedings on behalf
17 of the accused.

18 This procedure was authorized by virtue --

19 THE PRESIDENT: Mr. Brannon, before you pro-
20 ceed further I must ascertain the views of my colleagues
21 on this.

22 MR. BRANNON: I beg your pardon.

23 THE PRESIDENT: It may be that a majority are
24 not prepared to hear a word you propose to say about
25 that matter.

1 MR. BRANNON: There is no intention to read --

2 THE PRESIDENT: A majority have decided to
3 hear you.

4 MR. BRANNON: I have no intention of reading
5 the documents, if the Tribunal please, and so conserve
6 time.

7 THE PRESIDENT: Yes, Mr. Brannon.

8 MR. BRANNON: This procedure was authorized
9 by virtue of the provisions of Section 9-C of the Charter
10 wherein the accused are given the right to employ counsel
11 of their own selection. This section deals with the
12 subject of a fair trial for the accused.

13 Because of the contemplated differences be-
14 tween Japanese court procedure and that to be used by
15 this Tribunal a Japanese representative of the Central
16 Liaison Office of the government of Japan speaking in
17 behalf of the potential accused requested that British
18 or American lawyers be made available. Thereafter and
19 on the 15th of March, 1946 the then Acting President
20 of this Tribunal, Mr. Justice E. H. Northcroft, in a
21 communication directed to the Supreme Commander for the
22 Allied Powers, General Douglas MacArthur, requested
23 that American Counsel, because of their immediate
24 availability, be procured in sufficient numbers so
25 that there would be at least one American lawyer available

for each defendant to be tried.

1 On March 19th, 1946, the Supreme Commander
2 for the Allied Powers announced his full approval of
3 the suggestion so made stating that arrangements had
4 been and were being made to supply American counsel in
5 sufficient numbers to insure the Japanese defendants
6 proper representation and adequate defense.
7

8 Defense documents 3088-A and B are the com-
9 munications from the Tribunal to the Supreme Commander
10 and from the Supreme Commander to the Tribunal and
11 contain the information which I have just summarized.

12 It should be added that after the arrival of
13 American defense counsel the early pages of the trans-
14 cript show that the Tribunal with great caution demanded
15 proof that the appointment of such counsel by each
16 accused was a voluntary action of the accused and upon
17 his request and solicitation. Such appointments of
18 American counsel were signed by the accused themselves
19 and duly filed.

20 We offer the documents in evidence.

21 THE PRESIDENT: They cannot be treated as
22 evidence but you have said enough I think, Mr. Brannon.
23 What are they evidence of? Guilt or innocence? In
24 mitigation? We may direct they be filed as of record.
25 That is as much as we can do.

1 MR. BRANNON: Yes. That will satisfy the
2 record I am sure.

3 THE PRESIDENT: Mr. Yamaoka.

4 MR. YAMAOKA: May it please the Tribunal,
5 on behalf of certain of the accused I respectfully
6 request leave of the Tribunal to file and present paper
7 No. 1542 which is a supplement to the general motion
8 to dismiss on behalf of certain of the accused which
9 was submitted at the conclusion of the evidence on
10 behalf of the prosecution at record 16,662 and which
11 now is being renewed at the conclusion of all the evi-
12 dence.

13 THE PRESIDENT: No objection? Mr. Chief of
14 Counsel.

15 MR. KEENAN: We are unable to answer the
16 question with much intelligence, Mr. President, because
17 we haven't been served with a copy of it until this
18 moment. We may be able to answer the question in a
19 moment or two.

20 MR. YAMAOKA: If the Tribunal please, we did not
21 intend to argue this motion. We intended to file it
22 for the consideration of the Tribunal. The Tribunal
23 will recall that at record 16,265 when some of these
24 motions were under consideration at the close of the
25 prosecution's case --

1 THE PRESIDENT: We can't prevent you from
2 filing any motion at all that you like, Mr. Yamaoka,
3 but it is another matter to appoint a time to hear it.

4 MR. KEENAN: I suggest, Mr. President, if there
5 are any more motions that have been served that we
6 might dispose of such motions at this time and perhaps
7 we wouldn't require a hearing on this motion that has
8 just been served upon us this moment.

9 THE PRESIDENT: Well, we have no copies of
10 any motion. We haven't been notified of this. At
11 least I haven't.

12 MR. YAMAOKA: If the Tribunal please, the
13 original motion was filed today and, according to the
14 information that I obtained from our processing section,
15 it was supposed to have been served on both the prose-
16 cution as well as the Tribunal.
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1 THE PRESIDENT: Distribute copies of it if
2 they are available.

3 There are no copies provided for the Judges,
4 just an original.

5 MR. YAMAOKA: Well, I apologize to the Tribu-
6 al if there has been an oversight on our part, but
7 they were supposed to have been served.

8 THE PRESIDENT: Well, read your notice of
9 motion, and we will decide what we will do when we
10 hear it; or move your motion I should say.

11 MR. YAMAOKA: Then I shall read the supplement
12 to the general motion to dismiss on behalf of some
13 defendants which was filed at the conclusion of the
14 evidence on behalf of the prosecution and renewed at
15 the conclusion of all the evidence.

16 "Now come the defendants listed below in the
17 above cause by their attorneys of record and supplement
18 the General Motion to Dismiss filed on behalf of some
19 defendants at the conclusion of the evidence on behalf
20 of the prosecution, the same having been renewed in its
21 entirety at the conclusion of all the evidence, by add-
22 ing two new paragraphs thereto to read as follows:

23 "1. Nothing contained in the Potsdam Declara-
24 tion or the Japanese Instrument of Surrender or any-
25 thing done by way of 'implementation' of the terms

1 contained in the Instrument of Surrender with respect
2 to 'war criminals' or in the amended Charter of 3 May
3 1946 provide any authority for the trial of Japanese
4 nationals for acts and omissions which occurred prior
5 to the commencement of the Pacific War proper; that is
6 to say for acts and omissions which occurred prior to
7 7 December 1941, Washington time, and with respect to
8 the U.S.S.R. for acts and omissions prior to its formal
9 declaration of war on 9 August 1945; and hence this
10 Honorable Tribunal is without authority or jurisdiction
11 in law in a secondary sense to consider the guilt or
12 innocence of the defendants with respect to acts and
13 omissions in connection with the Manchurian Incident
14 or in connection with the China Affair prior to the
15 declaration of war by China on Japan which occurred on
16 8 December 1941, or in connection with the border inci-
17 dents and other charges by the U.S.S.R. prior to its
18 declaration of war on 9 August 1945.

19 "2. Furthermore, in agreeing to unconditional
20 surrender in the Instrument of Surrender, all the evi-
21 dence in the case shows that the Japanese Government
22 understood that it was surrendering with respect to
23 the Pacific War alone and nothing in connection with
24 the negotiations for surrender or in the Instrument of
25 Surrender gave the Japanese Government or Japanese

1 nationals the slightest inkling that Japanese nationals
2 were subject to trial as 'war criminals' for events
3 which took place prior to the commencement of the Pac-
4 ific War and with respect to the U.S.S.R. prior to 9
5 August 1945; and the effort of the prosecution to try
6 the defendants for acts and omissions prior to said
7 dates is an evasion and violation of the obligation
8 which the Japanese Government and the Allied Powers
9 undertook solemnly and in good faith in the Instrument
10 of Surrender.

11 "All of which is most respectfully submitted."

12 THE PRESIDENT: Wasn't all that covered in the
13 arguments on the original motion dismissed in May, 1946?

14 MR. YAMAOKA: Not in its entirety, accord-
15 ing to our recollection.

16 THE PRESIDENT: Mr. Chief of Counsel, we have
17 been debating whether we should call on you, but
18 perhaps you would like to say something.

19 MR. KEENAN: I have no desire to address the
20 Tribunal at length. I just wish to make two observa-
21 tions. The first is that the prosecution understands
22 the same objection, in substance, contained in this
23 motion has already been passed upon by this Tribunal.
24 And, secondly, Mr. President, that due provision has
25 been given to defense counsel to argue fully, I believe

1 without limitation of time, all pertinent subjects,
2 all matters of defense. There is no requirement for
3 any motion whatsoever. There is nothing that could be
4 said in argument of a motion that could not be advanced
5 in a summation.

6 THE PRESIDENT: Mr. Yamaoka.

7 MR. YAMAOKA: May it please the Tribunal, we
8 do not propose to argue this motion at the present time
9 since that can be amply handled in the summations, but
10 our purpose was to file this motion as of record. And
11 I do not think it improper at this stage of the pro-
12 ceeding to file such motion.

13 THE PRESIDENT: By a majority the motion is
14 dismissed. But you will have the right to argue any
15 new matters of law in your summation.

16 MR. YAMAOKA: May it please the Tribunal,
17 on behalf of seventeen of the accused listed in paper
18 No. 1538, I respectfully request leave of the Tribunal
19 to file the same so that it may be made a part of
20 the record in these proceedings. It is a motion to dis-
21 miss directed to the jurisdiction of the Tribunal and
22 the powers vested in the Supreme Commander for the Al-
23 lied Powers and contains certain amendments and addi-
24 tions to a similar motion submitted in January 1947
25 at record 16,261.

1 THE PRESIDENT: The procedure of adding to a
2 motion already dismissed is new to me. However, it is
3 only a technicality, I suppose.

4 Well, just file your motion. Do you want it
5 read?

6 MR. YAMAOKA: No, if your Honors please, we
7 do not propose to read that motion.

8 MR. KEENAN: Mr. President.

9 THE PRESIDENT: Mr. Chief of Counsel.

10 MR. KEENAN: I respectfully suggest that the
11 Tribunal give some consideration to our motion -- to
12 our request to the Court that refusal be given to the
13 filing of this motion which is on its face frivolous
14 and offensive.

15 THE PRESIDENT: Well, you can file it. You
16 move it. You dispense with the reading of it? You
17 don't want it read?

18 We make the same order as on the previous
19 motion already dismissed.

20 MR. YAMAOKA: At this time, if the Tribunal
21 please, the defense renews each and every motion to
22 dismiss heretofore presented in these proceedings.

23 In addition thereto we now move to dismiss the
24 Indictment and all the counts thereof as to each and
25

1 every accused, individually and collectively, in the
2 light of all the evidence now before this Tribunal,
3 and we respectfully ask for a finding of not guilty.

4 THE PRESIDENT: The application is dismissed.

5 MR. KEENAN: Are we ready for the summation?

6 THE PRESIDENT: Mr. Chief of Counsel.

7 MR. KEENAN: I understand that the defense
8 has finally closed, and it is now in order to begin
9 the summation.

10 THE PRESIDENT: We understand so, too, Mr.
11 Chief of Counsel, and we suggest that we hear your
12 summation in the morning.

13 We will adjourn until half past nine tomorrow
14 morning.

15 (Whereupon, at 1600, an adjournment
16 was taken until Wednesday, 11 February
17 1948, at 0930.)
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